IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 4659 OF 2006.

The Needs of Life C-op.Bank Ltd.... Petitioner.
V/s.
Ishwardas Topandas Ghanshani & ors... Respondents.

Shri Girish Godbole for the petitioner.

Shri Y.R. Naik for the respondents.

CORAM : V.C.DAGA, J.

DATED : 12.9..2006.

P.C. :

. Heard rival parties.

Perused petiton.

2. This common petition; filed under Article 227 of the Constitution of India is directed against the judgment and order dated 4.2.2006 passed by the Maharashtra State Co-operative Court, Mumbai in A.O. Nos.148 to 151 of 2005 (Ex.I), together with order dated 17.4.2006 passed in Review Application Nos. 3 to 6 of 20056 (Ex.P), followed by orders dated 4.5.2006 and 16.6.2006 passed by the learned Judge of the Co-operative Court, Mumbai in Dispute Nos. CC/I/183 of 2003, 293/2003 to 295/2003, incorporated at Ex.S and U to the petition. Petitioners have also prayed for various interim reliefs in the aid of final and substantive prayers incorporated in the

petition.

Factual Matrix:

3. Factual matrix reveals that the petitioner is a Co-operative Bank registered under the provisions of Maharashtra Co-operative Societies Act, 1960 ('the Act'), while the respondent Nos. 1 to 6 are nominal members who have borrowed financial assistance from the petitioner-Bank. Respondent Nos. 7 and 8 are original opponent Nos. 2 and 3 in all these disputes; whereas the petitioner- Bank is the Opponent No.1 in Dispute No. CCC/I/183 of 2003, 293 to 295 of 2003. Respondent NO.1 is the disputant in Dispute No. CC/I/183 of 2003 while respondent No.2 is the Disputant in Dispute No.CC/I/293 of 2003, respondent No.3 is a Disputant in Dispute No. CC/I/284 of 2003 and respondent Nos. 4 to 6 are Disputants in Dispute No.CC/I/295 of 2003. The respondent Nos. 7 and 8 are Opponents Nos. 2 and 3 in all the Disputes.

4. Respondent Nos.1 to 6 availed various financial facilities from the petitioner-Bank and appears to have committed several defaults in repayment of various borrowings made by them.

5. It appears that defaults in repayment of

loan facilities resulted in number of disputes between the petitioner-Bank and the respondents leading to disputes with respect to various entries in the books of accounts including rate of interest applied by the petitioner-Bank to their respective loan accounts.

6. It appears that various meetings took place between the Bank and the respondents-borrowers to sort out their differences. However, differences could not be resolved. The entries made in the account books could not be reconciled; with the result, the respondent No.1 and her family members filed 4 Disputes before the First Co-operative Court, Mumbai, referred to hereinabove; praying therein, that the dues payable by them be ascertained and the petitioner-Bank be directed to give upto-date and legible statement of accounts with complete break-up of each loan account and that bank should return all title deeds belonging to respondent No.1 with further declaration that the petitioner-Bank is not entitled to recover interest at the rate higher than the rate approved by the Reserve Bank of India from time to time and also sought declaration that the Bank is not entitled to recover penal interest from the respondent No.1 and others. Copies of the said applications have been produced along with the petition.(Exhibit E colly.).

7. Respondent Nos.1 to 6 moved an interim application praying that pending hearing and final disposal of the Application, the Opponent therein may be restrained from using Power of Attorney executed by Shri Ishwar Ghanshani, father of the Disputant in favour of the Opponent-Bank, or acting upon it to create third party interest with further prayer to deposit all the title deeds of the properties belonging to the Disputants and his family members with the Court and to appoint any Chartered Accountant as a Court Commissioner with a direction to go into the Loan accounts to correctly calculate interest as per the directions of the R.B.I., so as to arrive at exact balance amount due and payable to the petitioner-Bank. Copies of the interim Application dated 4.7.2003, 31.10.,2003 and 171.2004 are produced along with petition (Ex.F).

8. The petitioner-Bank by filing its reply opposed the said Interim prayers on the grounds stated in the replies. Copy of the said said replies are produced along with petition.(Ex.G Colly.).

9. The learned Judge of the Co-operative Court No.1, Mumbai, by reasoned judgment and order dated 15.10.2005 rejected all the said Interim prayers and

dismissed interim application.

10. The respondent Nos. 1 to 6 challenged the above order dated 16th October, 2005 passed by the Ld. Judge of Co-operative Court No.1 by filing 4 separate appeals, the same were numbered as A.O. No. 148 to 151 of 2005.

11. The learned President of the Co-operative Court by a common judgment and order dated 4.2.2006 was plesed to allow all the said appeals and set aside the orders which were under challenge. The operative operative part of the order reads as under:

. ORDER

. " A.O. Nos. 148 of 2005, 149 of 2005, 150 of 2005 and 151 of 2005 hereby allowed setting saside the impugned order under challenge on following terms and conditions:

.(a) The Appellants are directed to deposit an amount of Rs. 80 lakhs with the Respondent Bank being lump sum amount within one month from the date of this order and that is subject to final decision of the disputes pending before the Co-operative Court.

.(b) On deposit of amount referred above, the Respondent Bank is directed to produceall original documents of loan title deeds, power of attorney excuted by the appellant in A.O. No. 151 of 2005 -Ishwardas Ghanshani in favour of the Bank and all the documents of morgaged property before the Co-operative Court within 15 days for safe custody of the documents, till disposal of all the disputes.

.(c) After production of documents, the Ld. Advocate for the appellants is directed to move an application before the trial Court within 8 days for appointment of Court Commissioner who being a Chartered Accountant on the panel of Hon'ble High Court for inspection of accounts as per directives of Reserve Bank of India calling report of dues amount payable by the appellants tothe respondent Bank including accrued interest thereon within 15 days at the costs of the appellants having liberty to both the parties to raise their objection before the Co-operative Court within a short time.

.(d) On receipt of report of Chartered Accountant, the appellants are directed to lead their evidence, if they so desire as early as possible within one month and the Ld. Judge of the trial Court is directed to dispose of all the disputes on merits after hearing both sides advocates and appreciating evidence on record considering the report of the Court Commissioner and objections raised by both the parties within one month after closing evidence by present respondents. (Emphasis supplied)

. With these directions, all A Os stand disposed of without costs."

12. The respondent Nos. 1 to 6 pursuant to the aforesaid order dated 4.2.2006 paid a total sum of Rs. 80 Lakhs to the petitioner-Bank. and acted upon the said order to their prejudice. The petitioner-Bank accepted Rs. 80 lakhs withiout any murmur. Thereafter, petitioner-Bank on 18.3.2006 made an application to the trial Court and filed all the documents of title deeds including original declaration along with list. The respondent No.1 on 27.3.2006 made an application to the trial Court for appoint of Court Commissioner in compliance with the

order dated 4.2.2006 passed by the Court in A.O. Nos. 148to 151 of 2005. The said application dated 4.4.2006 came to be allowed; however, the same is not the subject matter of challenge in this petition or before this Court or any other forum as such the said order has become final and conclusive.

13. The respondent Nos.1 to 6 entertained a belief that there was an error in the order dated 4th April 2006 passed by the President of the Co-op.Court in A.O. Nos. 148 to 151 of 2005. They therefore, filed four separate Review Applications Nos. 3,4,5 and 6 of 2006 praying that the order dated 4.2.2006 be reviewed.

14. The petitioner -Bank filed their replies to the said application contendindg that there was no error apparent on the face of the record and prayed for their dismissal.

15. The Learned President of the Cooperative State Appellate Court by his common but different order dated 17.4.206 was pleased to allow the review application and directed correction to his previous order dated 4.2.2006.

16. Being aggrieved by the aforesaid orders dated 17.4.2006 passed by the President of the Maharashtra State Co-operative Court, Mumbai in A.O. No.148 to 151 of 2005 in Review Application Nos.3,4,5 and 6 of 2005 and the order passed by the learned Judge of the Co-operative Court dated 4.5.2006 and 16.6.2006, the present petitioner-Bank has filed this petition under Article 227 of the Constitution of India.

Submissions:

17. Shri Godbole, learned Counsel appearing for the petitioner submitted that the Co-operate Appellate Court did not notice one important fact that in the Interim Application dated 4.7.2003 the respondent Nos. 1 to 6 had prayed for an order directing the petitioner-Bank to deposit title deeds of the properties belonging to respondent Nos. 1 to 6; which were handed to the petitioner Bank at the time of taking loan. In his submission the Court had no jurisdiction to direct production of documents.

18. Shri Godbole further submitted that the issue with regard to the rate of interest being the legal issue, it has to be determined by the Court and its determination cannot be left to the

Chartered Accountant. In his submission, the Courts below did not appreciate that respondent Nos. 1 to 6 have already lodged various complaints with Reserve Bank of India complaining that the petitioner-Bank is charging excessive rate of interest and that the Courts below should have appreciated that the petitioner Bank had given a detailed explanation to Reserve Bank of India along with documentary evidence saying rate of interest has been charged as the written contract or consent reflected in the letters dated 20.2.2000, 4.11.2000, 4.11.2000 and 7.2.2001.

19. . Shri Godbole relied upon decision of the Apex Court in the case of **Central Bank of India vs. Ravindra & ors. (2002) 1 SCC 367,** to contend that rate of interest was applied by the Bank to loan accounts of the respondents as per law laid down by the Apex Court in the said judgment.

20. Shri Godbole further submits that the Co-opertative Appellate Court, Mumbai, has failed to exercise jurisdiction vested in it by not issuing any order as required under Order 26 Rule 16 of the Civil Procedure Code.

21. Shri Godbole further urged that petitioner-Bank had made a conditional statement

stating that if deposit of Rs. 1 crore is made by the respondent-disputants, then only; the petitioner-Bank shall agree to deposit power of attorney executed by the respondent in favour of the Bank and all the concerned original documents as well as title deeds deposited with the Bank. He, then, went on to submit that it was not open for the Appellate Court to pass any order and direct the respondents to deposit Rs. 80 lacs only and direct the Bank to produce all the documents of the loan accounts, title deeds and power of attorney executed by Shri Ishwardas Ghanshani- respondent No.1 herein.

22. Shri Godbole, further submitted that the order of review could not have been passed by the Co-operative Appellate Court, directing the petitioner-Bank to produce all the loan documents in the Appellate Court. He also challenged the impugned order contending that the lower appellate Court failed to exercise discretion in accordance with law. He further submits that it was not open for the lower appellate Court to appoint Court Commissioner at this stage of the proceedings to take accounts or to ascertain application of rate of interest.

23. During the course of hearing, Shri Godbole was asked to take instructions from the Bank and

find out whether or not the petitioner-Bank is prepared to return or at least deposit deposit Rs. 80 lac in this Court. It was specifically indicated to Shri Godbole that if the petitioner-Bank desired challenge the impugned order under which they got benefit of retaining Rs. 80 lacs, then they must come out with their willingness to refund or deposit that amount with this Court pending disposal of this petition. The Bank could not be heard of saying; they will retain the benefits of the order and challenge the onerous part thereof. In fairness, it was expected of the Bank to agree to deposit that amount at least with this Court. However, after taking instructions from the petitioner-Bank, ShriGodbole expressed inability of the Bank to deposit this amount with this Court. Petitioner has filed affidavit dated 11.9.2006 stating therein that they are not ready to refund or deposit the amount of Rs. 80 lacs received by them from the respondent No.2.

Consideration:

24. Having heard Shri Godbole, it is needless to mention that after having retained the the benefits of the impugned order to the extent it directs the respondent to deposit Rs.80 lac; which the respondent has deposited with the Bank, it is not

open for the petitioner to challenge the said order, retaining benefit of the impugned order.

25. The petitioner-Bank cannot be heard of saying that they would accept beneficials part of the order and challenge onerous part of it. Either they must accept order in toto or refuse to accept it in toto. The impugned order is a composite scheme to solve the dispute between the parties with a view to do justice to both of them. It is thus clear that the order which is being challenged in this petition and for which review is being sought is a composite order creating reciprocal rights, liabilities and obligations on both the parties. If reciprocal obligations and rights are created, then it must be either accepted in toto or rejected in toto. Part of the order is not open to challenge. The decision rendered by the Appellate Court was a single integrated decision. Either the decision as a whole could be sustained or as a whole it could be declared invalid, otherwise, it would amount making new decision and substitution thereof which is not permissible in law. Thus, considering the stand taken by the Bank not to part with the amount of Rs. 80 lacs received by them under the impugned order It is not open for them to challenge part of the order as observed herein. It was open for them to refuse or not to accept the said amount and to insist upon

compliance of their statement that the Bank wanted Rs. 1 Crore, as stated by their Counsel before the trial Court. The very fact that the Bank has accepted Rs. 80 Lac, as ordered by the Court, demonstrated acceptance without any protest. Having accepted the said amount and having retained the same; and having refused part of the said deposit, it is not open for them to turn around and challenge the part of the said order. In my considered view, this is not a fit case for exercise of writ jurisdiction in favour of the petitioner-Bank.

26. Apart from the above view, having examined the order on merits, I do not see any illegality in the order wherein the trial Court has directed the Bank to produce loan account and statement of accounts. Bank is dealing in public money should have public confidence. The public confidence can only be built up by exhibiting transparancy in the day to day banking transaction. The Bank should never hesitate in producing loan account and ledger showing transactions in the account of the customers. Bank account be allowed to play game of hide and seek.

. In the result, petition is dismissed in limine with no order as to costs.

(V.C. DAGA,J.)